

ST 96-13

Tax Type: SALES TAX

Issue: Rolling Stock (Purchase/Sale Claimed To Be Exempt)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

TAXPAYER

Taxpayer

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Docket #

IBT #

Karl W. Betz
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES

THE TAXPAYER, APPEARED PRO SE.

SYNOPSIS

THIS CAUSE CAME ON TO BE HEARD FOLLOWING A LIMITED SCOPE RETAILERS' OCCUPATION/USE TAX AUDIT PERFORMED BY THE ILLINOIS DEPARTMENT OF REVENUE (HEREINAFTER THE "DEPARTMENT") UPON TAXPAYER. THE AUDIT ORIGINATED WHEN PERSONNEL IN THE DEPARTMENT'S OFFICE AUDIT UNIT WERE CHECKING RUT-25 USE TAX RETURN FORMS FOR ONES ON WHICH A VEHICLE BUYER HAD CLAIMED THE ROLLING STOCK EXEMPTION BY SIMULTANEOUSLY FILING THE RUT-7 EXEMPTION CERTIFICATE.

AS TAXPAYER DID NOT AGREE WITH THE PROPOSED LIABILITY DETERMINED BY THE DEPARTMENT, AN ASSESSMENT WAS ISSUED WHOSE TIMELY PROTEST BY TAXPAYER CULMINATED IN THIS CONTESTED CASE. AT HEARING, TAXPAYER CONTESTED CERTAIN FINDINGS MADE BY THE DEPARTMENT AUDITOR THE ENTIRE

LIABILITY ESTABLISHED BY THE AUDITOR WAS BASED UPON HIS DISALLOWANCE OF THE ROLLING STOCK EXEMPTION CLAIMED BY TAXPAYER FOR HIS PURCHASE OF A 1990 CADILLAC.

THIS DISALLOWANCE OF THE ROLLING STOCK EXEMPTION IS THE PRIMARY ISSUE IN THIS CASE, ALTHOUGH AT HEARING THE TAXPAYER ALSO CONTESTED THE COMPUTATION OF THE ASSESSMENT.

AFTER REVIEWING THE COMPLETE TRANSCRIPT OF RECORD INCLUDING ALL DOCUMENTS ADMITTED THEREIN, I RECOMMEND THE ISSUES BE RESOLVED PARTIALLY IN FAVOR OF THE DEPARTMENT AND PARTIALLY IN FAVOR OF THE TAXPAYER.

FINDINGS OF FACT

1. THE PRIMA FACIE CASE OF THE DEPARTMENT WAS ESTABLISHED BY THE INTRODUCTION, WITHOUT OBJECTION, OF ITS CORRECTED RETURN AND NOTICE OF TAX LIABILITY INTO THE RECORD. (TR. 7; DEPT. EX. NOS. 1 AND 3)
2. TAXPAYER PURCHASED A NEW 1990 CADILLAC DEVILLE, VIN XXXXX, ON SEPTEMBER 4, 1990 FROM CAR DEALER. (TAXPAYER EX. NO. 1)
3. THE TOTAL CONSIDERATION, OR SELLING PRICE, RECEIVED BY DEALER CAR DEALER FROM TAXPAYER WAS \$26,975.00. (TAXPAYER EX. NO. 1)
4. PURSUANT TO STATUTORY AUTHORITY, THE DEPARTMENT AUDITOR DID CAUSE TO BE ISSUED A CORRECTION OF RETURNS AND THIS SERVED AS THE BASIS FOR NOTICE OF TAX LIABILITY (NTL) NO. XXXXX ISSUED BY THE DEPARTMENT ON DECEMBER 29, 1993 FOR \$3,175.000 INCLUSIVE OF TAX, STATUTORY INTEREST AND PENALTY. (DEPT. EX. NOS. 1 AND 3)

5. NO DOCUMENTARY EVIDENCE WAS PRODUCED BY TAXPAYER WHICH IDENTIFIED THE CADILLAC AS A VEHICLE BEING USED IN INTERSTATE COMMERCE FOR HIRE. (TR. 3)
6. NOTWITHSTANDING ITS CLAIMED USAGE, THE CADILLAC WAS UTILIZED EXTENSIVELY FOR PERSONAL AND NON-EXEMPT PURPOSES. (TR. 15-21)

CONCLUSIONS OF LAW

SECTION 3 OF THE USE TAX ACT (35 ILCS 105/3) IMPOSES USE TAX UPON THE PRIVILEGE OF USING IN THIS STATE TANGIBLE PERSONAL PROPERTY, INCLUDING AN AUTOMOBILE, PURCHASED FROM A RETAILER. SECTION 105/3-60 OF THE ACT EXCLUDES FROM TAXATION:

"...ROLLING STOCK USED BY AN INTERSTATE CARRIER FOR HIRE,..."

THE DEPARTMENT REGULATION THAT DEFINES "ROLLING STOCK" (86 ADMIN. CODE, CH. I, SEC. 130.340) STATES, IN PART:

"B) THE TERM "ROLLING STOCK" INCLUDES THE TRANSPORTATION VEHICLES OF ANY KIND OF INTERSTATE TRANSPORTATION COMPANY FOR HIRE (RAILROAD, BUS LINE, AIR LINE, TRUCKING COMPANY, ETC.), BUT NOT VEHICLES WHICH ARE BEING USED BY A PERSON TO TRANSPORT ITS OFFICERS, EMPLOYEES, CUSTOMERS OR OTHERS NOT FOR HIRE (EVEN IF THEY CROSS STATE LINES) OR TO TRANSPORT PROPERTY WHICH SUCH PERSON OWNS OR IS SELLING AND DELIVERING TO CUSTOMERS (EVEN IF SUCH TRANSPORTATION CROSSES STATE LINES).

* * *

"D) THE EXEMPTION APPLIES TO VEHICLES USED BY AN INTERSTATE CARRIER FOR HIRE, EVEN JUST BETWEEN POINTS IN ILLINOIS, IN TRANSPORTING, FOR HIRE, PERSONS WHOSE JOURNEYS OR PROPERTY WHOSE SHIPMENTS, ORIGINATE OR TERMINATE OUTSIDE ILLINOIS ON OTHER CARRIERS. THE EXEMPTION CANNOT BE CLAIMED FOR AN INTERSTATE CARRIER'S USE OF VEHICLES SOLELY BETWEEN POINTS IN ILLINOIS WHERE THE JOURNEYS OF THE PASSENGERS OR THE SHIPMENTS OF PROPERTY NEITHER ORIGINATE NOR TERMINATE OUTSIDE ILLINOIS."

WHILE SECTION 130.340 WAS PROMULGATED BY THE DEPARTMENT AS A RETAILERS' OCCUPATION TAX REGULATION, IT HAS BEEN INCORPORATED BY REFERENCE INTO THE RULES EMPLOYED BY THE DEPARTMENT IN ITS ADMINISTRATION OF THE USE TAX ACT. SEE §6 ADMIN. CODE, CH. I, SEC. 150.1201.

IN ORDER FOR THE USE OF TANGIBLE PERSONAL PROPERTY TO BE EXEMPT FROM ILLINOIS USE TAX PURSUANT TO THE "ROLLING STOCK" EXEMPTION, THE FOREGOING STATUTORY AND REGULATORY LANGUAGE REQUIRES THAT CERTAIN CONDITIONS BE MET. ONE IS THAT THE TANGIBLE PERSONAL PROPERTY MUST BE A TRANSPORTATION VEHICLE (OR AN INTEGRATED OR ATTACHED PART) PURCHASED BY AN INTERSTATE TRANSPORTATION COMPANY FOR HIRE. ANOTHER IS THAT THE ITEM BE USED BY AN INTERSTATE CARRIER FOR HIRE AS ROLLING STOCK, MOVING IN INTERSTATE COMMERCE, OR MOVING IN INTRASTATE COMMERCE IF THE PERSON/CARGO'S TRANSPORTATION JOURNEY BEGINS OR ENDS OUTSIDE OF ILLINOIS. ANOTHER CONDITION IS THAT THE PURCHASER OF THE ITEM MUST BE THE INTERSTATE CARRIER FOR HIRE, OR A LESSOR UNDER LEASE OF ONE YEAR OR LONGER EXECUTED OR IN EFFECT AT TIME OF PURCHASE TO AN INTERSTATE CARRIER FOR HIRE. ALSO, SUBSECTION (E) OF SECTION 130.340 REQUIRES THAT FOR A PURCHASER TO CLAIM THE EXEMPTION, IT SHOULD GIVE THE SELLER A CERTIFICATION THAT THE PURCHASER IS AN INTERSTATE CARRIER FOR HIRE, AND THE PURCHASER IS PURCHASING THE PROPERTY FOR USE AS ROLLING STOCK MOVING IN INTERSTATE COMMERCE. IF THE PURCHASER IS A LONG TERM LESSOR, THE PURCHASER MUST GIVE A CERTIFICATION TO THAT EFFECT. THE DEPARTMENT IS AUTHORIZED TO GO BEHIND SUCH A CERTIFICATION AND DISREGARD IT IF THE DEPARTMENT DETERMINES THAT THE PURCHASE WAS TAXABLE BASED UPON ITS EXAMINATION OF THE PURCHASER'S RECORDS OR ACTIVITIES.

TAXPAYER SUBMITTED SOME DOCUMENTARY EVIDENCE REGARDING CERTAIN CONDITIONS NECESSARY TO QUALIFY FOR THE EXEMPTION, INCLUDING AN EQUIPMENT

LEASE FROM HIMSELF AS LESSOR TO SUPERIOR EXPRESS, INC. AS LESSEE (TAXPAYER EX. NO. 2); ILLINOIS COMMERCE COMMISSION INTRASTATE STAMP CARDS (TAXPAYER EX. NOS. 3 & 4); AND SOME FREIGHT BILLS.

THE FIRST QUESTION I WILL EXAMINE IS IF THERE IS SUFFICIENT EVIDENCE TO DOCUMENT INTERSTATE USAGE OF THE AUTOMOBILE ON A "FOR-HIRE" BASIS TO QUALIFY AS ROLLING STOCK MOVING IN INTERSTATE COMMERCE. TAXPAYER SUBMITTED SOME SHIPPING DOCUMENTS IN THE FORM OF MASTER FREIGHT BILLS AND THESE SHOW SHIPMENTS OF BUSINESS FORMS FROM ILLINOIS TO VARIOUS BUSINESSES LOCATED IN MISSOURI. HOWEVER, THESE FREIGHT BILLS DO NOT IDENTIFY THE CADILLAC AS THE VEHICLE DOING THE SHIPPING. EVEN ASSUMING THESE SHIPMENTS WERE MADE USING THE CADILLAC, TAXPAYER'S WITNESS ACKNOWLEDGED THAT THE CADILLAC WAS USED FOR SIGNIFICANT OTHER BUSINESS OF THE LESSEE, AS THE SALESMAN NORMALLY DRIVES IT TO HIS APPOINTMENTS IN THE MORNING (TR. 17), AND IT IS ALSO USED TO TRANSPORT COMPANY PERSONNEL TO MAKE INSPECTIONS ON DAMAGED SHIPMENTS, CLAIMS, ETC. (TR. 18-20) FURTHER, THE SALEMAN HAS ACCESS TO AND USES THE CADILLAC AFTER WORK. (TR. 15-16)

REGARDING THE LEASE HEREIN, I NOTE IT IS FROM TAXPAYER AS AN INDIVIDUAL LESSOR, TO A LESSEE CORPORATION (CORPORATION) THAT HE OWNS, AND THIS LEASE IS NOT AN ARM'S LENGTH TRANSACTION BECAUSE LESSOR TAXPAYER, AS PRESIDENT AND OWNER OF THE LESSEE, WOULD HAVE THE RIGHT TO CONTROL THE USE OF THE VEHICLE.

THE ILLINOIS COMMERCE COMMISSION INTRASTATE CAB CARDS SUBMITTED ONLY ESTABLISH THAT THE VEHICLE WAS REGISTERED FOR THE PURPOSE OF COMMERCE, THEY ARE NOT CONCLUSIVE PROOF OF USAGE AS ROLLING STOCK IN INTERSTATE COMMERCE.

IN THIS CASE, AS IN ALL TAX EXEMPTION CASES, A TAXPAYER'S CLAIM THAT A CERTAIN PURCHASED ITEM IS TAX EXEMPT MUST BE ANALYZED IN THE CONTEXT

THAT ENTITLEMENT TO EXEMPTION MUST BE PROVEN BY THE TAXPAYER, AND DOUBTS REGARDING THE APPLICABILITY OF THE EXEMPTION WILL BE RESOLVED IN FAVOR OF TAXATION. A PARTY CLAIMING AN EXEMPTION HAS THE BURDEN TO PROVE CLEARLY AND DEMONSTRATE CONCLUSIVELY THAT HE IS ENTITLED TO THE EXEMPTION. (CHRISTIAN ACTION MINISTRY V. DEPARTMENT OF LOCAL GOVERNMENT AFFAIRS , 74 ILL. 2D 51, 62 (1978); TELCO LEASING, INC. V. ALLPHIN, 63 ILL. 2D 305, 310 (1976); LETOURNEAU RAILROAD SERVICES, INC. V. DEPARTMENT OF REVENUE , 134 ILL. APP. 3D 638, 642 (FOURTH DIST. 1985). BECAUSE THIS IS A QUESTION OF TAX EXEMPTION, CONCLUSIVE EVIDENCE IS NECESSARY, AND IN THIS CASE, I CANNOT CONCLUDE THAT CONCLUSIVE EVIDENCE HAS BEEN PRESENTED.

THE BASE OR SELLING PRICE OF THE VEHICLE UPON WHICH THE TAX SHOULD BE COMPUTED IS \$26,975.00 (TAXPAYER EX. NO. 1) WHICH INCLUDES THE REBATE, AS REBATES ARE PART OF THE TAXABLE GROSS RECEIPTS UNDER ILLINOIS LAW. SEE KEYSTONE CHEVROLET CO. V. KIRK, 69 IL. 2D 483, (1978). THIS BASE IS LOWER THAN THE \$32,000.00 BOOK VALUE USED BY THE DEPARTMENT WHEN IT COMPUTED THE ORIGINAL ASSESSMENT, THE BOOK VALUE HAVING BEEN USED BECAUSE THE DEPARTMENT HAD NOT BEEN PROVIDED WITH THE BILL OF SALE AT THAT TIME.

IN SUMMARY, I CONCLUDE THE TAXPAYER HAS NOT OVERCOME THE PRIMA FACIE CASE OF THE DEPARTMENT ON THE ROLLING STOCK EXEMPTION ISSUE, AND THE TAX BASE SHOULD BE ADJUSTED IN ACCORDANCE WITH MY FINDINGS ABOVE.

RECOMMENDATION

BASED UPON MY FINDINGS AND CONCLUSIONS AS STATED ABOVE, I RECOMMEND THE DEPARTMENT REDUCE NTL NO. XXXXX AND ISSUE A FINAL ASSESSMENT.

KARL W. BETZ
ADMINISTRATIVE LAW JUDGE